



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

March 9, 2001

Mr. Robert A. Mann, Director  
Office of Air Regulatory Development  
Commonwealth of Virginia  
Department of Environmental Quality  
629 East Main Street  
Richmond, Virginia 23219

Dear Mr. Mann, *Bob*

In a December 12, 2000 letter from the Commonwealth of Virginia, Department of Environmental Quality to EPA, you requested EPA conduct an informal review on the Virginia proposed regulation 9 VAC 5 Chapter 140. In response to your request, EPA reviewed the proposed regulation 9 VAC 5 Chapter 140 and has prepared the following comments listed in the enclosure. EPA appreciates the care you have taken to include the provisions of the Model Rule, 40 CFR Part 96. EPA also appreciates the format you used specifically pointing out the differences between the Virginia proposed regulation and the EPA Model Rule. This format was extremely helpful for our review.

Thank you for the opportunity to comment on your draft proposed rule. If you have any questions or wish to discuss these comments, please contact me or Cristina Fernandez at (215) 814-2178.

Sincerely,

A handwritten signature in black ink, which appears to read "David L. Arnold", is written over the word "Sincerely,".

David L. Arnold, Chief  
Air Quality Planning & Information Services Branch

Enclosure

Enclosure

## **U.S. EPA Comments on Virginia's NOx SIP Call 9 VAC 5 Chapter 140**

In your December 12, 2000 letter, you requested EPA to present our comments in such a manner as to make a clear distinction between those that are suggestions for improving the quality of the submittal and those that will be a basis for approval or disapproval of the submittal. In addition, you were also interested in knowing if your proposed regulation meets the requirements for automatic approval under 40 CFR 51.121(p)(1), and if there are any provisions in your regulation that would prevent Virginia sources from participating in the EPA administered trading program.

The following are our comments in response to 9 VAC 5 Chapter 140, Virginia's proposed rule entitled "Regulations for Emissions Trading". We appreciate Virginia's efforts to simplify review of the draft regulation, and hope these comments are helpful.

Overall, the content of Virginia's proposed rule is good. We appreciate the care Virginia has taken to include the provisions of the model rule (40 CFR part 96) in the development of the proposed rule. However, there are some significant problems, identified below, with the proposed rule that will affect its approvability and will also prevent Virginia sources from participating in the EPA administered trading program.

### **1. Approvability Issues**

A significant problem with the proposed rule is that Virginia increased its State budget for electric generating units (EGUs) beyond what was assumed for the EGUs for purposes of the full State budget in the NOx SIP Call Rule. If the Virginia EGU budget is increased, Virginia must demonstrate that it will achieve offsetting reductions from sources under one or more other sectors such that the overall State budget will be met. Virginia did not include in the in the package for our review any documents that demonstrate how the Commonwealth plans to meet the overall State budget.

Another problem is the significant expansion of the compliance supplement pool from 5,504 allowances to 6,990 allowances. The compliance supplement pool size is capped and it cannot be increased.

### **2. Additional Trading Comments**

The following are specific comments on the rule language in 9 VAC 5 Chapter 140 and are suggestions for improving the quality of the submittal. Our comments reference language citations in the proposed rule, which had been edited to show differences between Virginia's rule and part 96.

## **96.2 Definitions:**

*Allocate or allocation:* Since EPA is authorized to allocate allowances in the event that Virginia fails to submit an allocation to EPA (see 96.41(b)), Virginia should retain the reference to the “Administrator” in this definition, as well as in other references to allocations throughout the regulation,

*NOx allowance:* The reference to the “Administrator” should be retained; see the comment for “allocate or allocation”, above. In addition, the definition does not currently cover allowances under the Federal NOx Budget Trading Program established by the section 126 final rule; see comment for “NOx Budget Trading Program”, below:

*NOx Budget Trading Program:* The definition of “NOx Budget Trading Program” needs a reference to provide coordination with other trading programs, including other State NOx SIP call trading programs (§51.121) and the Federal NOx Budget Trading Program under the section 126 final rule (§52.34). One solution would be for this definition to read: “a multi-state nitrogen oxides air pollution control and emissions reduction program established in accordance with this part, pursuant to §51.121, *or pursuant to §52.34*, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.”

*State operating permit:* EPA requests clarification on the nature, contents and issuance procedures of the “state operating permit”, 9 VAC 5 Chapter 80.

## **96.4 Applicability:**

(b) The fuel restrictions should be retained in multiple references within this section (see 96.4(b), (b)(1)(i), (b)(1)(iii)(A), (b)(2), and (b)(3)). The restriction is implied because the default emissions rates that appear in Table 2 of §75.19 are limited to oil and gas-fired units. However, the restriction must be made explicit to avoid confusion and implementation problems. EPA intends to revise §97.4 to make this restriction explicit.

## **96.5 Retired unit exemption**

(c)(6)(i)(B) For the loss of an exemption, Virginia should add language to address a situation in which no permit is required. EPA intends to add clarifying language for this purpose in §97.5. EPA suggests the following: “If no permit application is required, the date on which the unit first resumes operation”.

## **96.6 Standard requirements**

(c)(6) and (7) Retain the reference to the *Administrator*. See the definition for *NOx allowance*, above.

## **96.21 Submission of NOx Budget permit applications**

(c)(2) EPA requests clarification on the removal of this provision. Permanent operating permits (i.e., permits that do not require periodic renewal), for example, could warrant removal of this provision.

### **96.23 NOx Budget permit contents**

Minor note: the phrase “as approved or adjusted by the permitting authority” is superfluous, and can be removed. EPA has removed this language from 40 CFR part 97.

### **96.30 Compliance certification report**

(b)(2) and (3) The rule provides for default methods of deducting allowances if the NOx Authorized Account Representative wishes not to specify these items. EPA notes that the compliance certification forms will continue to describe these two items as “optional”. EPA requests clarification on why these items are required, rather than optional as in parts 96 and 97.

### **96.43 Compliance supplement pool**

The rationale behind having two procedures for acquiring early reduction credits from the compliance supplement pool (one to reserve ERCs and another to request ERCs) is unclear. The use of two procedures is potentially confusing and may raise the administrative costs for affected units. In §96.43(f), the allocation of ERC allowances appears to depend only on requests, not reservations, of ERCs. EPA requests clarification on the purpose of the reservation procedure, and recommends a more streamlined approach.

(d)(5) Since the control period ends on September 30, Virginia may want to consider extending the deadline (currently November 1) for the submission of the verification statement. Final data will not likely be available by November 1.

(e)(4)(ii) See (d)(5), above.

(g) To ensure that the total ERC and DDC allocations do not exceed the amount of the compliance supplement pool adequate allowances that are available to units, Virginia should clarify how the pool is to be divided between allowances available to units as ERCs, and allowances available as DDCs. While §96.43(f) potentially allocates the entire compliance supplement pool for ERCs, §96.43(h) potentially allocates the entire pool to DDCs.

### **96.55 Banking**

(b) Language is needed to coordinate the mechanism for limiting the use of banked allowances under the NOx SIP call trading programs (established by states) and the mechanism under the section 126 program. Such language would allow a single ratio to be calculated and applied in all these programs for purposes of limiting use of banked allowances. One solution that will address this deficiency is described under the definition for “NOx Budget Trading Program”, above.

## **96.70, 96.71, and 96.74 in Subpart H, Monitoring and reporting**

EPA is recommending a number of revisions to the monitoring section of all state rules, in addition to the changes resulting from the delay in the compliance deadlines. These substantive revisions improve upon the model rule (part 96), making the program requirements more comprehensible and, in many cases, more flexible for sources. These changes are already in part 97. See the attached table, entitled *Differences between Parts 96 and 97 that states should incorporate into their rules*.

### **96.85 Budget opt-in permit contents**

(a) Minor note: the phrase “as approved or adjusted by the permitting authority” is superfluous, and can be removed. EPA has removed this language from 40 CFR part 97.

### **96.87 Change in regulatory status**

(b)(1)(iii)(B) The purpose of this provision is to give a partial allocation to an opt-in unit that becomes a NOx Budget unit after the control period has already started. The provision (a companion provision to (b)(1)(iii)(A)(2)) prevents a double allocation to the unit; a full allocation as an opt-in unit, and another full allocation as a NOx Budget unit. The provision is therefore necessary. EPA requests clarification on the removal of the provision.

Below you will find two tables which delineate the differences between parts 96 and 97. The EPA would like States to incorporate these changes that were made to part 97 because they improve upon the model rule (part 96); making the program requirements more comprehensible and in many cases more flexible for sources. The applicable sections of part 96 and 97 have been listed to easily access the exact language change in the rule. The changes that have a check mark under the “Key” column identify changes which EPA believes must be made to allow for sources complying with the NOx SIP call and those complying with part 97 to be able to trade with one another.

In general, the changes to “subpart H - Monitoring and Reporting” are particularly important. All of these changes were made to aid sources. In some cases, the language changes were made to clarify source requirements and in some cases they were made to reflect revisions to part 75. Adopting the monitoring language in part 97 which references the revisions to part 75 is crucial for sources. Without these language changes, sources will not be able to take advantage of the additional monitoring flexibility incorporated into the recent part 75 revisions. Table B lists only the part 96-97 differences that reflect these part 75 rule revisions. However, for the reasons given above, States are encouraged to incorporate all of the changes to Subpart H in their rules.

Finally, §51.121 says that for a SIP to be approvable, a State must give EPA the first three years worth of allocations at once. However, EPA has clarified this and said that a State only needs to give EPA the initial year of allocations with its SIP submittal.

If you have any questions about the information contained in the tables or would like further assistance in drafting your trading, rules please do not hesitate to contact EPA's Clean Air Markets Division at (202) 564-9180 and ask for a representative of the Program Development Branch.

<b>Table A: Differences Between Parts 96 and 97 that States should incorporate into their rules</b>			
<b>Provision Title</b>	<b>Part 96 Language</b>	<b>Part 97 Language</b>	<b>Key</b>
Definition of NOx Allowance	§96.2 - Definition of NOx Allowance	§97.2 Definition of NOx allowances includes language that 126 sources may trade w/SIP sources and makes it clear that flow control applies to allowances deducted for compliance. Language needs to be included but doesn't necessarily have to be in the definition.	
Def'n of NOx Budget Emissions Limitation	§96.2 - Part 96 may make this clear in other places in the rule.	§97.2 Definition makes it clear that flow control applies to allowances deducted for compliance and not to allowances deducted for excess emissions. In part 97, the flow control provision has been moved to §97.54 and integrated into the deduction process.	
25 T exemption-budget deduction	§96.4 - No explicit budget deduction	§97.40 & §97.4(b)(4)(ii)(B) - Trading program budgets are reduced by the permitted limit.	
25 T exemption- and opt-ins	No mention	§97.4(b)(4)(B)(viii) & §97.80 A unit w/the 25 ton exemption cannot opt into the program.	
Retired units-allocations	No mention	§97.5(c)(2) Owners and operators will specify a general account for EPA to allocate, allows greater flexibility for owners and operators.	
Standard Requirements - NOx	§96.6(c)(1) -	§97.6(c)(1) Language added to provide clarification as to what NOx allowances can be deducted for.	
Recordation of NOx Allowance Allocations	§96.53	§96.53 - Clarifies procedures - the Administrator will record NOx allowance allocations in accounts three years in advance of the relevant control period.	

**Table B: Differences Between Subpart H - Monitoring and Recordkeeping of Parts 96 and 97 that reflect Recent Revisions to Part 75**

Provision Title	Change to Provision*	Key
Monitoring - General Requirements	<b>§97.70(c)/§96.70(c)(1)&amp;(2) <u>Reporting data prior to initial certification</u></b> - Part 97 has been revised from part 96 to reference §75.19 and to reflect other changes to part 75.	
Monitoring - Initial certification and recert. procedures	<b>§97.71(b)(2) <u>Requirements for recertification</u></b> - Part 97 has been revised from part 96 to reflect changes in part 75.	
Monitoring - Initial certification and recert. procedures	<b>§97.71(b)(3)(v)(A) &amp; (A)(1) <u>Procedures for loss of certification</u></b> - Part 97 has been revised from part 96 to reference §75.20(a)(4)(iii), §75.20(b)(5), §75(20)(h)(4), §75.21(e) and to reflect changes to part 75.	
Monitoring - Initial certification and recert. procedures	<b>§97.71(c)- <u>Initial certification and recertification procedures for low mass emission units using the excepted methodologies under §75.19 of this chapter.</u></b> Entire section has been re-written and re-numbered because the original language in §96.71(c) was incredibly difficult for sources to comprehend and to follow.	
Monitoring - Record Keeping and Reporting	<b>§97.74(d)(1)(ii) <u>Quarterly reports</u></b> - Part 97 was revised because an important reference to an earlier section was left out of 96. Part 97 was revised to reference §97.71(c) - <u>Initial certification and recertification procedures for low mass emission units using the excepted methodologies under §75.19 of this chapter.</u>	
Monitoring - Record Keeping and Reporting	<b>§97.74(d)(2)(ii) <u>Quarterly reports</u></b> - In part 96, the inappropriate section in part 75 was referenced. The reference to §75.74(b) should be changed to reference §75.74(c)(6). Additionally, under (A) a reference to §97.71(c) was added for clarification.	
* Note, if no section number is listed for part 96 then it has the same numbering under parts 96 and 97.		